vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.798 OF 2005
IN
SUIT NO.447 OF 1996

Darshansingh L. Bhatia ... Plaintiff

V/s.

Harvindersingh Pritam Singh & Anr. ... Defendants

And

Smt. Devinder Kaur Shemby & Ors. ... Respondent

Mr.J.J. Shah for Plaintiff
None for Defendants

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **JUNE 15, 2006**

P.C.:

. The Plaintiff has filed the present Motion to restore the suit which was dismissed by the Prothonotary & Senior Master on 20.3.2002. An affidavit of the Plaintiff in support of the Motion has been filed. He has averred that he had engaged an advocate in 1996 for representing him in the suit. The Advocate returned the brief as he had stopped practising. The Plaintiff then engaged another Advocate who filed his Vakalatnama. It appears that this Advocate did not attend the matter. Therefore, the suit came to be dismissed. Defendant No.1 has expired during the pendency of the Suit. The respondents are his legal representatives. The plaintiff had already filed a Chamber Summons for bringing on record the heirs of the deceased defendant

which also came to be dismissed. The Plaintiff learnt of the dismissal of the suit when a search of the records was taken on 20.3.2005 by his present advocate. It is, therefore, prayed that the plaintiff should not be penalised for the defaults of his advocates. The plaintiff has averred that the Chamber Summons which was dismissed on 17.7.2002 for default was also dismissed because of the advocate's negligence.

2. An affidavit of service has been filed indicating service of the present Motion on the Respondents. None of them are represented in this Court.

3. In my view, the Plaintiff should not be penalised for the default of the advocates as is well settled by several judgments. The reasons stated in the affidavit of the Plaintiff are good and sufficient reasons for setting aside the order of dismissal.

4. The Suit is, therefore, restored to file subject to payment of costs of Rs.5,000/- payable to the Maharashtra State Legal Services Authority.